

Exhibit L

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

)
IN RE APPLE iPHONE TRUST)
) Case No. 4:11-cv-06715YGR
LITIGATION)
_____)

** HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER **

REMOTE VIDEOTAPED DEPOSITION OF

TIMOTHY SWEENEY

Monday, February 8, 2021

Volume I

Reported by:

NADIA NEWHART

CSR No. 8714

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1 state their appearances and affiliations for the
2 record. If there are any objections to proceeding,
3 please state them at the time of your appearance,
4 beginning with the noticing attorney.

5 MR. DOREN: This is Richard Doren from Gibson 09:09:02
6 Dunn & Crutcher. I represent Apple. Joining me
7 today from Gibson Dunn is Dana Li and Anthony Bedel,
8 and also in attendance from Apple are Andrew
9 Farthing and Noreen Krall.

10 MR. BORNSTEIN: This is Gary Bornstein from 09:09:23
11 Cravath. I am representing Epic Games. Joining me
12 from my firm are Colin Herd and Daniel Ottaunick,
13 and also with me from Epic Games is Gena Feist.

14 And before we begin, Mr. Doren, can I just
15 confirm that Mr. Farthing and Ms. Krall are people 09:09:46
16 who are entitled, under the protective order, to
17 have access to highly confidential information?

18 MR. DOREN: Yes, Mr. Bornstein, they are.

19 MR. BORNSTEIN: Okay. Thank you.

20 THE VIDEOGRAPHER: Will the court reporter 09:09:56
21 please swear in the witness.

22 THE REPORTER: Please raise your right hand.

23 TIMOTHY SWEENEY,

24 having been first duly sworn, was examined and

25 testified as follows:

1 retail stores which sell physical boxes of games --

2 Q And when you're -- sorry.

3 A -- and online retailers such as Amazon.

4 Q To purchase the physical -- physical games

5 through Amazon? 11:50:17

6 A I'm certain that physical games are available
7 through Amazon. I'm not certain about digital codes
8 or copies of games.

9 Q And when you're talking -- sorry. And when
10 you're talking about physical games, are you talking 11:50:30
11 about for the earlier versions of the Xbox that
12 require physical disks and the like?

13 A My understanding is that a very large number
14 of Xbox games are still available for retail sales
15 and are distributed physically. 11:50:49

16 Q And that's -- those are the older versions
17 that require the actual physical media to play
18 Fortnite; is that correct?

19 A I'm not aware that any -- that -- I'm not
20 aware that new games for new consoles can't be 11:51:06
21 purchased in retail.

22 Q And when in-app purchases are made in
23 Fortnite on Xbox, those are -- those transactions
24 are made through the Xbox digital store, correct?

25 A Yes. When a real-money transaction occurs in 11:51:32

1 Fortnite on Xbox, Microsoft provides and mandates
2 the payment processing technology.

3 Q And Microsoft charges a 30 percent commission
4 for those in-app purchases made through Xbox,
5 correct? 11:51:53

6 A My understanding is that Microsoft's
7 commission for purchases is roughly 30 percent
8 potentially varying by price circumstance and
9 territory.

10 Q But 30 percent is the number that you think 11:52:05
11 of in terms of the Microsoft commission, correct?

12 A Yes.

13 MR. BORNSTEIN: Object to the form.

14 BY MR. DOREN:

15 Q And is that 30 percent commission charged by 11:52:16
16 Microsoft anticompetitive?

17 MR. BORNSTEIN: So I, again, am going to
18 instruct you to exclude from your answer any
19 communications you had with counsel on the subject.

20 THE WITNESS: I don't have an opinion on that 11:52:34
21 with respect to competition law. And as to -- well,
22 I think the term "anticompetitive" -- I'm not
23 sure -- I'm not sure if I have any opinion left over
24 that's not informed by legal advice.

25 BY MR. DOREN: 11:53:00

1 Q Do you consider the 30 percent commission
2 charged by Microsoft to be unfair?

3 A With respect to purchases on the Xbox
4 platform, I'm not sure if it's fair or not.

5 Q Why not? 11:53:21

6 A In reference to our earlier discussion,
7 whether that structure is fair depends on the
8 ultimate impact on consumers, prices, competition
9 and developers and other factors which Epic has not
10 analyzed sufficiently for me to conclude. 11:53:41

11 Q On the Sony PlayStation, in-app purchases
12 are -- within Fortnite must be made through Sony's
13 digital store, correct?

14 A With respect to purchases made using real
15 money, yes. 11:54:02

16 Q And you're distinguishing real money versus
17 transactions using V-Bucks that have been purchased
18 with real money and are then spent within the game?

19 A Yes.

20 Q And Sony charges a 30 percent commission for 11:54:15
21 all -- for all of those transactions, correct, all
22 of those real money transactions?

23 A Yes. My understanding is Sony's commission
24 is approximately 30 percent, potentially varying
25 based on circumstances, but we think of it as 11:54:33

[illegible]

21	Sony anticompetitive?
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25	THE WITNESS: With respect to the term	11:56:15
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1 "anticompetitive," I don't think I have an opinion
2 on that specific topic which isn't just informed by
3 legal opinion.

4 BY MR. DOREN:

5 Q Is the 30 percent commission charged by Sony 11:56:27
6 unfair?

7 A As with Microsoft, I'm not sure.

8 Q And for the same reasons?

9 A Yes.

10 Q And along with distributing certain Epic 11:56:41
11 games, Sony also has an ownership interest in Epic
12 Games, correct?

13 A Yes.

14 Q And when did it acquire that?

15 A I believe that Sony made its investment in 11:56:59
16 Epic Games in 2020.

17 Q Do you remember when in 2020?

18 A I'm not certain. My recollection would be
19 towards the beginning of the year.

20 Q And how much was the investment? 11:57:15

21 A I'm not certain. My recollection is that
22 Sony's investment was in the ballpark of
23 \$250 million.

24 Q And do you know what percentage ownership
25 Sony acquired for the \$250 million investment? 11:57:36

1 MR. BORNSTEIN: Object to the form.

2 THE WITNESS: I can't calculate this number
3 in my head, but I believe that their ownership
4 interest would be a fraction of approximately
5 \$250 million divided by Epic's -- the value of Epic 11:58:04
6 in which we raised this capital, which I believe was
7 approximately \$17 billion.

8 BY MR. DOREN:

9 Q Thank you. Now, the Nintendo console is
10 Nintendo Switch, correct? 11:58:31

11 A With respect to Fortnite, yes.

12 Q Thank you. And that's a mobile console?

13 A The Switch's -- the Nintendo Switch's key
14 feature is that it can be operated both as a mobile
15 device; it can also be plugged into power and a 11:58:47
16 television and deliver higher performance.

17 Q And for in-app purchases made for -- in
18 Fortnite, Nintendo requires that those purchases be
19 made through the Nintendo digital store, correct?

20 A That's my understanding. 11:59:08

21 Q And Nintendo charges a 30 percent commission
22 on those in-app purchases, correct?

23 A Yes, that's my understanding with the
24 previous exceptions that I made based on territory
25 or dollar price on various transactions. 11:59:28

1 Q Do you have any specific variations in mind,
2 or are you just allowing room that there may be
3 some?

4 MR. BORNSTEIN: Objection to form.

5 THE WITNESS: My general recollection is that 11:59:37
6 the various consoles add or adjust the rate based on
7 international territories for various reasons, which
8 may include just tax but may include other costs.
9 It's not clear to me.

10 BY MR. DOREN: 12:00:06

11 Q The equation, if you will, is based on a
12 30 percent commission?

13 A We think of Nintendo Switch as charging
14 30 percent as we redeveloped out our business.

15 Q And do you consider that 30 percent 12:00:16
16 commission charged by Nintendo to be
17 anticompetitive?

18 MR. BORNSTEIN: Again, I'll caution you to
19 exclude from your answer any communications that you
20 may have had with counsel on the subject. 12:00:27

21 THE WITNESS: On the term of
22 anticompetitiveness, I don't think I have any
23 understanding of that other than lawyer's advice.

24 BY MR. DOREN:

25 Q And do you consider the 30 percent commission 12:00:38

1 charged by Nintendo to be unfair?

2 A That's not clear to me.

3 Q Why not?

4 A As with Microsoft and Sony, understanding the
5 fairness of it requires understanding the impact on 12:01:00
6 consumers, prices, developers, markets and
7 competition.

█

█

█

█

█

█

█

15 Q And how do you know that? 12:01:46

16 A Among other things, █

█ █, I believe late last year, mentioned that Sony

18 was very significantly subsidizing the cost of their

19 hardware. And our discussions with Microsoft in the

20 time frame of the Xbox 360 hardware included 12:02:06

21 numerous discussions pervaded by clear context that

22 Microsoft was heavily subsidizing the hardware,

23 though I don't remember them specifically saying

24 those words. I remember to the tune of █

█ of subsidy being commonly understood. 12:02:26

1 A Sure. Cross-platform play refers to the
2 ability of users on at least two distinct platforms
3 to play together in a single game session, usually
4 playing as team members on a squad so that they are
5 in the same game session having the same experience 01:32:13
6 together. And if both have a voice chat headset,
7 then they're able to actually talk together and
8 socialize as they're playing the game experience.

9 Q And as we discussed earlier, that meant that,
10 for example, by cross-platform, we're talking about 01:32:29
11 somebody on an iPhone playing with somebody on a
12 PlayStation, correct?

13 A Yes. That would fall into the understanding
14 of cross-platform play.

15 Q Because we've got a Sony platform and the iOS 01:32:44
16 platform and the play is going on across the two?

17 A Yes.

18 Q Okay. And what is "cross-progression"?

19 A Cross-progression refers to another
20 cross-platform feature in which a user who 01:33:00
21 themselves participates in the game on more than one
22 device, say the iPhone and a PlayStation, has their
23 experience on each device accessible or carried over
24 to the other such that if you achieve two victories
25 on iOS and one Victory Royale on PlayStation, then 01:33:27

1 on both platforms you see that you've contained --
2 you've achieved three victories, and these aspects
3 of game play progression and statistics are not
4 locked into any single platform.

5 Q So as you go from platform to platform, you 01:33:44
6 get to kind of see where you stand in the game
7 overall as opposed to just on any one platform?

8 A Yes, to the extent the game and the platform
9 permit cross-progression.

10 Q And did Apple iOS permit cross-progression? 01:34:00

11 A Yes.

12 Q And we talked about this earlier, but the
13 term "cross-wallet," can you describe what that
14 means to you.

15 A In the case of Fortnite, cross-wallet refers 01:34:17
16 to the case in which a player can buy digital
17 currency on any platform or any supported platform
18 and have access to that currency on all of the
19 platforms.

20 So you might buy V-Bucks on iOS and then play 01:34:37
21 on PlayStation and redeem the items for digital
22 goods on your PlayStation.

23 And this is a -- unlike cross-purchase and
24 cross-progression, this is a feature that is -- not
25 all of the platform-makers support in the same 01:35:03

1 manner; there are sometimes differences in which
2 cross-features they support.

3 Q We talked about Nintendo and Sony, for
4 example, did not support cross-wallet, if you will,
5 regarding V-Bucks, correct? 01:35:16

6 A Yes.

7 Q And in terms of cross-progression, were there
8 any platforms that -- or are there any platforms
9 that have not supported that at any point in time?

10 A Yes. This has evolved significantly since 01:35:32
11 Fortnite launched in 2017. It's a long story.
12 Would you like me to try to --

13 Q No, probably not. I appreciate the warning.

14 Let me ask if, currently, there are any
15 platforms that do not support cross-progression. 01:35:53

16 A All platforms that the current version of
17 Fortnite works on support cross-progression. I
18 referred to the latest version because to the extent
19 Fortnite can be played by -- on iOS or Mac for users
20 who have an old version installed, cross-progression 01:36:23
21 is broken in that case because the latest version of
22 the game and the older version of the game don't
23 always speak the same language in terms of what
24 progress constitutes.

25 Q And are there still people playing those 01:36:36

1 older versions on iOS?

2 A Yes.

3 Q Do you know how many people?

4 A No.

5 Q By the way, have you evaluated how many iOS 01:36:49
6 Fortnite players moved or continued to play Fortnite
7 on platforms other than iOS after August 2020?

8 A My understanding is that -- I didn't do it
9 personally, but Epic personnel analyzed facets of
10 that question at various points in time. 01:37:16

11 Q And what did they find?

12 A I don't recall any really clear or
13 interesting conclusions from that effort.

14 Q Do you recall who did that work?

15 A Not specifically, but a group within Epic 01:37:55
16 that is known as the analytics team.

17 Q I'm sorry, what? The what team?

18 A Analytics team.

19 Q Analytics. Sorry, you just wobbled right
20 when you said the word. 01:38:10

21 And who leads the analytics team?

22 A I'm not certain. The name that comes to mind
23 as the go-to person for me, for analytics, is Darren
24 Clary, but it seems we're -- people move around and
25 change roles, so I'm not sure it's current. 01:38:39

1 THE WITNESS: I believe so.

2 BY MR. DOREN:

3 Q Do you recall what percentage of Epic revenue
4 was attributable to iOS from 2019?

5 A No. 02:08:17

6 Q Do you know if it was in the range of 5 to
7 6 percent?

8 A If I were estimating, I would estimate
9 higher, but I don't have any reason to think it's
10 wrong. 02:08:41

11 MR. DOREN: Gary, we're probably at a pause
12 here. If you want to take a break for lunch, since
13 it's actually getting a little late for you all for
14 lunch, or we can keep going. It's entirely up to
15 the two of you. 02:08:57

16 MR. BORNSTEIN: Let's take our lunch break.
17 It's a good idea.

18 MR. DOREN: How long would you like?

19 MR. BORNSTEIN: Why don't we resume, say, at
20 11:45 your time, 2:45 Eastern? 02:09:06

21 MR. DOREN: That would be great. Thank you,
22 gentlemen.

23 MR. BORNSTEIN: See you then.

24 THE VIDEOGRAPHER: This is the end of media
25 four. It is 2:09 p.m. We are off the record. 02:09:16

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1 (Lunch recess.)

2 THE VIDEOGRAPHER: This marks the beginning
3 of media five. It is 2:48 p.m. We are on the
4 record.

5 BY MR. DOREN: 02:48:42

6 Q Good afternoon, Mr. Sweeney.

7 A Thank you.

8 Q And just confirming again that you're alone,
9 don't have any media or materials with you?

10 A No. I have the Zoom window. I have the 02:48:52
11 document viewer.

12 Q Thank you. That sounds like plenty of
13 company.

14 Mr. Sweeney, you understand the protection of
15 users' privacy and security is a fundamental value 02:49:14
16 of Apple's, don't you?

17 A Yes, and of Epic's as well.

18 Q And that Apple has built its brand and
19 reputation around those principles?

20 A I understand that user privacy and security 02:49:36
21 are fundamental differentiators for Apple.

22 Q And you, as CEO of Epic, would agree that the
23 protection of users' privacy is a worthwhile goal,
24 correct?

25 A Absolutely. 02:49:54

1 Q And that many consumers place a very high
2 value on having their personal information and
3 privacy protected, true?

4 A Yes.

5 Q And you've praised Apple for not profiting 02:50:08
6 off of people's data or surveillance or any
7 practices -- any similar practices when selling --
8 when selling its iPhones, correct?

9 A I'm not sure --

10 Q You don't recall? 02:50:30

11 A Yeah, I --

12 Q As you sit here today, do you think Apple
13 deserves praise for not profiting off of people's
14 data?

15 MR. BORNSTEIN: Object to the form. 02:50:42

16 THE WITNESS: With respect to consumer data
17 and consumer data privacy, yes.

18 MR. DOREN: I just note that it sounds like
19 there's a wind up toy on somebody's desk or
20 something. So if somebody needs to mute, it would 02:51:00
21 be great if they did.

22 Thank you.

23 Q So, Mr. Sweeney, you believe that Apple
24 competes -- that Apple's -- strike that. Let me
25 start over. 02:51:22

1 Switch, Sony PlayStation and Microsoft.

2 Q Did Epic implement a hotfix to place a direct
3 payment mechanism in Sony, Microsoft or Nintendo
4 products?

5 A No. 04:13:37

6 Q And why not?

7 MR. BORNSTEIN: So you can answer the
8 question, but just carve out any legal advice you
9 might have received on the subject or communications
10 with counsel, if any. 04:13:51

11 THE WITNESS: Epic, in this Project Liberty,
12 was not challenging the business model of the
13 console-makers in Project Liberty.

14 BY MR. DOREN:

15 Q Why not? 04:14:05

16 MR. BORNSTEIN: Same caution.

17 Go ahead.

18 THE WITNESS: As I described earlier, the
19 approach of the console-makers was fairly different
20 than the situation on smartphones, and we did 04:14:18
21 not have -- do not have now a clear sense that their
22 policies are wrong, wrongful, or that they -- I'm
23 not speaking as a lawyer and -- or that they tend to
24 inflate consumer prices. We are not really clear on
25 the entirety of their economic model. 04:14:51

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1 MR. BORNSTEIN: We're at about the hour and a
2 half mark, so let's take a break when you get to a
3 good spot here.

4 BY MR. DOREN:

5 Q So despite -- so despite Sony, Microsoft and 04:15:09
6 Nintendo each charging a 30 percent commission, Epic
7 decided that it wasn't sure whether or not those
8 business models were anticompetitive and, therefore,
9 elected not to attack their commission level,
10 correct? 04:15:36

11 MR. BORNSTEIN: So on that one, I might have
12 to instruct you not to answer entirely. But to the
13 extent you have an answer that is not the result of
14 or the product of communications with legal counsel,
15 then you can go ahead. 04:15:47

16 Maybe it would be -- sorry. Maybe it would
17 be helpful if we just ask the court reporter to read
18 the question back unless Mr. Doren wants to --

19 MR. DOREN: I'm fine with that. Let's read
20 it back. 04:16:00

21 MR. BORNSTEIN: Great. It was a long
22 instruction, so let's hear the question again.

23 MR. DOREN: Thank you.

24 (Record read as follows:

25 "Q: So despite Sony, Microsoft and 04:15:12

1 Nintendo each charging a 30 percent
2 commission, Epic decided that it wasn't
3 sure whether or not those business models
4 were anticompetitive and, therefore,
5 elected not to attack their commission 04:15:30
6 level, correct?")

7 MR. BORNSTEIN: I'll object to the form of
8 the question as well and caution you not to reveal
9 legal advice.

10 THE WITNESS: I don't have an opinion or 04:16:36
11 understanding, independent of advice of counsel, on
12 whether their business model is anticompetitive.
13 Epic at this time did not launch a challenge to the
14 Microsoft, Sony or Nintendo console business model
15 in conjunction with Project Liberty. 04:16:55

16 BY MR. DOREN:

17 Q And at that point, that's because you did not
18 think that being charged a 30 percent commission by
19 Sony, Microsoft and Nintendo was unfair, correct?

20 MR. BORNSTEIN: Object to the form of the 04:17:07
21 question.

22 THE WITNESS: That point, and now I'm not
23 clear on whether their subsidized hardware and
24 30 percent software fee business model is fair.

25 BY MR. DOREN: 04:17:29

1 Q You don't know one way or the other?

2 A That's right.

3 Q As somebody who's been developing games since
4 1991, you don't just have a gut sense of whether
5 them charging 30 percent is -- is fair or not when 04:17:40
6 it's the same amount that Apple and Google are
7 charging?

8 MR. BORNSTEIN: I'll object. He asked and
9 answered this question several times.

10 THE WITNESS: As a matter of gut, I don't 04:18:09
11 have a -- I don't have an intuitive feeling on the
12 facts. I -- the idea posited that their subsidized
13 or whole bill of costs is counterbalanced between --
14 counterbalanced by software fees without creating
15 excessive pricing is fundamentally economic and not 04:18:46
16 intuitive because it relies on a detailed economic
17 analysis of the businesses which we're not able to
18 perform.

19 MR. DOREN: Let's take a break. How long do
20 you want? 04:19:09

21 MR. BORNSTEIN: Why don't we assume at 4:30
22 Eastern, 1:30 Pacific.

23 MR. DOREN: Sounds good. Thank you.

24 THE VIDEOGRAPHER: This marks the end of
25 media five. It's 4:19 p.m. We are off the record. 04:19:20

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [] was not requested.

16 I further certify that I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date subscribed
20 my name.

21 Dated: this 9th day of February, 2021

22
23 
24

NADIA NEWHART

25 CSR NO. 8714